

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARMAN Y. WILLIAMS,

Plaintiff,

08 Civ. 3858

-against-

OPINION

FLORENTINO HERNANDEZ, Chair, Official Capacity, NEW YORK CITY HOUSING AUTHORITY, DEAN ROBINSON, GLORIA BUSH, NEW YORK CITY HOUSING AUTHORITY, Its agents, employees, successors, assigns and all others in active concert with them,

Defendants.

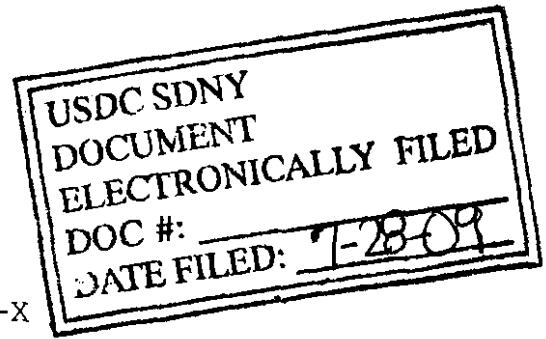
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A P P E A R A N C E S:

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Sweet, D.J.

Defendants Tino Hernandez (incorrectly identified in the Complaint as "Florentino" Hernandez ("Hernandez" or "the Defendant") and the New York City Housing Authority ("NYCHA" or the "Defendant Authority," collectively, the "Defendants") have moved under Rules 4(m) and 12(c), F. R. Civ. P., to dismiss the complaint of plaintiff Carman Y. Williams, pro se ("Williams" or the "Plaintiff"). On the conclusions set forth below, the motion is granted.

I. BACKGROUND

The Parties

Williams has been the tenant of record of an apartment located in Nathan Straus Houses ("Straus Houses"), a NYCHA development located at 344 East 28th Street, since on or about May 8, 1990. Defendant NYCHA is a public housing authority. Defendants Robinson and Bush are employees of NYCHA and are assigned to Strauss Houses as the Housing Manager and Housing Assistant, respectively.

Prior Proceedings

On October 20, 2007, Williams filed her complaint against the Defendants in the Pro Se Office. Plaintiff alleges five causes of action: (1) violation of 42 U.S.C. § 1983 arising out of the denial of her requests for a grievance hearing; (2) violation of 42 U.S.C. § 1437a(a)(3)(B) arising out of the denial of her request for a hardship exemption; (3) retaliation and racial discrimination in violation of 42 U.S.C. § 3604, et. seq., arising out of eviction proceedings initiated by the NYCHA; (4) violation of 24 C.F.R. § 966, et. seq., arising out of the denial of her requests for a grievance hearing; and (5) negligent hiring and supervision of employees by the NYCHA.

By Order dated April 24, 2008, Williams' request for injunctive relief following her receipt of a notice from NYCHA that the continuation of her tenancy was under review was denied.

NYCHA and Hernandez were served with the Summons and Complaint on August 18, 2008. NYCHA and Hernandez answered the Complaint on September 17, 2008.

The instant motion was marked fully submitted on March 9, 2009.

II. THE FACTS

In accordance with its state-authorized and federally-mandated powers, the Housing Authority takes administrative action pursuant to its Termination of Tenancy Procedures ("Termination Procedures") to terminate the tenancy of tenants who are, inter alia, chronically delinquent in the payment of rent. See Exh. E to the Declaration of Mindy Merdinger Blackstock in Support of Defendants' Motion to Dismiss the Complaint ("Blackstock Decl."). Before termination of tenancy charges are brought against any NYCHA tenant, the tenant is given an opportunity to discuss the problem with the manager of the development. Id. ¶ 2. If the tenant will not meet with the manager, and/or if, following such a meeting, the manager believes that termination of tenancy is the appropriate course of action, the case is referred to the Tenancy Administrator who reviews the file and, if appropriate, prepares administrative charges. Id. ¶ 3. If tenancy termination charges are brought, the tenant is entitled to a hearing, on specific written charges, before

an impartial hearing officer. Id. ¶ 4, 5. The tenant is apprised of her right to appear with an attorney, or other representative, to confront and cross-examine witnesses against her, and to present her own witnesses. Id. ¶ 6. The Hearing Officer must issue a written decision regarding whether the charges are found to be proven and, if so, the penalty to be imposed. Id. ¶ 9. The decision of the Hearing Officer is then reviewed by NYCHA's Board to determine if the Hearing Officer's decision is contrary to any applicable laws or regulations. Id. ¶ 11. If NYCHA concludes that the tenancy should be terminated, it must then serve the tenant with a notice to vacate, commence an action in Housing Court, and obtain a judgment of possession and a warrant of eviction against the tenant before any eviction action may commence. Id. ¶ 25. Meanwhile, a tenant may obtain judicial review of NYCHA's determination to terminate her tenancy through an Article 78 proceeding. Id. ¶ 12.

By letter dated October 3, 2007, Williams was advised by Defendants that her lease was being considered for termination for Chronic Rent Delinquency ("CRD") and an appointment was made for Williams to discuss the matter with management on October 9, 2007. Blackstock Decl. Exh.

F. On October 9, 2007, Robinson sent Williams a follow-up letter advising her that she was being granted another opportunity to meet with the management office on October 12, 2007 to discuss her CRD charges before her tenant folder would be forwarded to the Central Office for review. Id. On October 12, 2007, Robinson sent a third letter setting an October 16, 2007, or in the alternative, October 18, 2007 meeting date to discuss Williams' CRD. Id. According to the letters, Williams did not attend any of the meetings, and by letter dated October 18, 2007, Robinson advised Williams that her folder was being forwarded to NYCHA's Tenancy Administrator for review. Id. NYCHA served formal charges of Chronic Rent Delinquency on Williams on October 16, 2007. Id. Exh. G. The hearing on those charges commenced on September 19, 2008 before an impartial hearing officer, was continued on October 8, 2008, and December 10, 2008, and was scheduled to resume on January 22, 2009. Blackstock Decl. ¶ 17.

In addition to the CRD action, the NYCHA commenced a non-payment proceeding in Housing Court resulting from Williams' alleged failure to pay nearly a year of back rent. See Blackstock Decl. ¶ 19, Exh. H & I. Williams unsuccessfully moved to dismiss the action and, on

appeal to the Appellate Term, First Department, unsuccessfully moved for a stay of the Housing Court non-payment proceeding until resolution of her appeal. Id. Exh. I. On December 17, 2008, the non-payment proceeding was adjourned to January 28, 2009. Blackstock Decl. ¶ 19.

III. DISCUSSION

A. Plaintiff's First, Second, and Fourth Claims

1. Legal Standards

On a motion to dismiss pursuant to Rule 12, all factual allegations are accepted as true, and all inferences are drawn in favor of the pleader. Mills v. Polar Molecular Corp., 12 F.3d 1170, 1174 (2d Cir. 1993). The issue "is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Villager Pond, Inc. v. Town of Darien, 56 F.3d 375, 378 (2d Cir. 1995) (quoting Scheuer v. Rhodes, 416 U.S. 232, 235-36 (1974)).

However, while the pleading standard set forth in Rule 8 of the F. R. Civ. P. is a liberal one,

the pleading standard Rule 8 announces . . . demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusion or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (internal cites and quotes omitted). Thus, a complaint must allege sufficient factual matter to "state a claim to relief that is plausible on its face." Id. (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In meeting this "plausibility standard," the plaintiff must demonstrate more than a "sheer possibility" of unlawful action; pleading facts that are "'merely consistent with' a defendant's liability . . . 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557); see also Reddington v. Staten Island Univ. Hosp., 511 F.3d 126, 131 (2d Cir. 2007) ("Although the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice. To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient to raise a right to relief above the speculative level.") (internal quotes and cites

omitted)); Gavish v. Revlon, Inc., No. 00 Civ. 7291 (SHS), 2004 WL 2210269, at *10 (S.D.N.Y. Sept. 30, 2004) ("[B]ald contentions, unsupported characterizations, and legal conclusions are not well-pleaded allegations and will not defeat a motion to dismiss.").

Although the allegations of a pro se complaint are reviewed under less stringent standards than pleadings drafted by counsel, the "duty to liberally construe plaintiff's complaint is not the equivalent of a duty to re-write it." Joyner v. Greiner, 195 F. Supp. 2d 500, 503 (S.D.N.Y. 2002) (dismissing pro se plaintiff's complaint for failing to allege facts to support a necessary element of his claim). Moreover, this is "not a case involving an uneducated, naïve plaintiff who may have inartistically stated a valid cause of action." Raitport v. Chemical Bank, 74 F.R.D. 128, 135 (S.D.N.Y. 1977). Williams is a graduate of the Benjamin N. Cardozo School of Law and passed the New York State bar examination. She has appeared pro se in seven prior proceedings against NYCHA, its employees, and her fellow tenants of Straus Houses, which include: several adversary proceedings in Bankruptcy Court; a sexual harassment lawsuit in federal court; a state court defamation action against the NYCHA attorney in

the sexual harassment lawsuit and another attorney for responding to a document request from the Appellate Division's Character and Fitness Committee in connection with Williams' application to the bar; a defamation action in state court against several of her neighbors at Straus Houses; a discrimination complaint before the New York State Division of Human Rights; and a 2005 federal action based upon NYCHA's consideration of potential termination of tenancy charges against Williams. See Blackstock Decl. ¶¶ 26-44. As the Raitport court noted for a comparably educated pro se litigant:

He comes before this Court wearing the cloak of a pro se applicant, and seeks to extract from us the solicitude ordinarily afforded one appearing without counsel. But this should not shield him from rebuke when merited. He is an intelligent, able and sophisticated litigant [W]e are not to be manipulated by resourceful but meritless moves . . . which serve only to distract us from important judicial business.

Id. at 133 (quoting Ackert v. Bryan, Docket No. 27240 (2d Cir. June 21, 1963)).

Finally, the courts will not "excuse frivolous or vexatious filings by pro se litigants," Iwachiw v. State Dep't of Motor Vehicles, 396 F.3d 525, 529 n.1 (2d Cir.

2005), and pro se status "does not exempt a party from compliance with relevant rules of procedural and substantive law." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 477 (2d Cir. 2006) (quoting Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983)).

2. The First, Second, and Fourth Claims Do Not Allege Sufficient Facts to State a Claim Upon Which Relief May Be Granted.

Williams' first and fourth claims, alleging violations of 42 U.S.C. § 1437d(k) and 24 C.F.R. § 966, respectively, arise from Defendants' refusal to grant Williams' request for a grievance hearing.¹ Williams' second claim alleges violations of 42 U.S.C. § 1437a(a)(3)(B) arising from the NYCHA's denial of Williams' request for a hardship exemption.

¹ NYCHA, as a public housing authority, is subject to Housing and Urban Development ("HUD") regulations, which "set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing authorities (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes . . . any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations" 24 C.F.R. § 966.50. Pursuant to these regulations, NYCHA maintains a Grievance Policy governing individual grievances between the tenant and NYCHA. See Blackstock Decl. Exh. B. Under NYCHA's policy a tenant may invoke the grievance procedure if the grievance is eligible for processing, the tenant meets deadlines for filing a grievance and the tenant is current in her rent paying obligations. Id.

The relevant factual allegations set forth in Plaintiff's claims are minimal. The first claim alleges, in relevant part:

5. Plaintiff has made numerous requests for grievances that have been ignored by the Defendant management employees.
6. Plaintiff is entitled under the Housing Act to make grievances arising out of her tenancy and to have grievance hearings scheduled when dissatisfied with the results of any such informal efforts to resolve any grievances.

Complaint ¶ 5, 6. The second claim alleges, in relevant part:

9. Plaintiff applied for a hardship exemption in or about October 2007.
10. The Defendant Dean Robinson, without complying with the statute denied plaintiff's request one day after it had been made.

Complaint ¶ 9, 10. The fourth claim incorporates the allegations contained in the prior claims and further alleges:

21. Defendants have refused to adhere to its own policies and have repeatedly denied to the Plaintiff on at least three (3) occasions the right to have a grievance hearing in connection

with proposed actions - adverse and detrimental to the Plaintiff and her family - and thus Plaintiff's rights have been violated as a direct and proximate cause.

Complaint ¶ 21.

Taking as true that Plaintiff was denied a grievance hearing on several occasions, nothing pled in the Complaint, aside from Plaintiff's assertions that Defendants acted unlawfully, suggests that such denials were improper. Similarly, the fact that Plaintiff's request for a hardship exemption was denied "one day after it had been made" fails to establish more than the "sheer possibility" of unlawful action by Defendants. See Iqbal, 129 S.Ct. at 1949. That Plaintiff's factual allegations are "consistent with" her claims against Defendants does not render her factual allegations sufficient to satisfy the "plausibility standard" set forth in Iqbal and Twombly. Id.; Twombly, 550 U.S. at 557. Because Plaintiff's first, second, and fourth claims contain "no more than [legal] conclusions" unsupported by factual allegations, they are dismissed for failure to state a claim upon which relief may be granted.²

² Defendants also argue that no private right of action exists under 42 U.S.C. § 1983 to enforce the provisions of 42 U.S.C. § 1437a(a)(3)(B), 42 U.S.C. § 1437d, or 24 C.F.R. § 966. Because Plaintiff's claims fail

B. Plaintiff's Third Claim for Race Discrimination and Retaliation Is Not Ripe for Review

Plaintiff's third claim alleges violation of 42 U.S.C. § 3601, et seq., arising from Defendant's alleged racial discrimination and attempts at retaliation as a result of Plaintiff's prior lawsuit against the NYCHA. The claim alleges, in relevant part:

16. Based on Plaintiff's past allegations of violations and a recent complaint the defendants each and all have engaged in retaliatory acts against the Plaintiff in the form of threats of eviction and other harassment beginning subsequent to the disposition of a previous suit against the Authority in [. . .] Similarly situated white and non-black tenants have not been subjected to similar onerous terms and conditions of tenancy, and in fact have been subjected to more favorable terms and conditions.

Complaint ¶ 16. Defendants seek dismissal of Williams' third claim for discrimination and retaliation on the grounds that Williams' claims is merely speculative and based on "contingent future events may not occur as anticipated, or indeed may not occur at all." Thomas v.

to allege sufficient facts to state a viable claim, it is unnecessary to address this argument at this time. As a general matter, however, the Supreme Court has expressed a reluctance to find an implied right of action where none was explicitly granted by Congress. Gonzaga Univ. v. Doe, 536 U.S. 273, 280 (2002).

Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81

(1985). Defendants argue that because the claim is not ripe, this Court lacks subject matter jurisdiction to consider the claim.

When considering a motion to dismiss based on lack of subject jurisdiction, the Court must accept as true all material factual allegations in the complaint.

Shipping Fin. Servs. Corp. v. Drakos, 140 F.3d 129, 131 (2d Cir. 1998) (citing Scheuer, 416 U.S. at 236). However, a "plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). "[W]hen the question to be considered is one involving the jurisdiction of a federal court, jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inference favorable to the party asserting it." Drakos, 140 F.3d at 131 (citing Norton v. Larney, 266 U.S. 511, 515 (1925)).

In addition to materials contained in the pleadings, the Court may also "resolve disputed jurisdictional fact issues by reference to evidence outside the pleadings, such as affidavits." Filetech S.A. v. France Telecom S.A., 157 F.3d 922, 932 (2d Cir. 1998) (citing Antares Aircraft, L.P.

v. Fed. Republic of Nigeria, 948 F.2d 90, 96 (2d Cir. 1991), vacated on other grounds, 505 U.S. 1215 (1992)); see also J.S. ex rel. N.S. v. Attica Cent. Sch., 386 F.3d 107, 110 (2d Cir. 2004), cert. denied, 544 U.S. 968 (2005). However, conclusory or hearsay statements contained in the affidavits may not be relied upon. Attica Cent. Sch., 386 F.3d at 110.

Ripeness is a "constitutional prerequisite" to the exercise of jurisdiction by federal courts. Nutritional Health Alliance v. Shalala, 144 F.3d 220, 225 (2d Cir. 1998). The ripeness doctrine prevents the courts from "premature adjudication" over "abstract disagreements," and protects the government from "judicial interference until a . . . decision has been formalized and its effects felt in a concrete way by the challenging parties." Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967), overruled on other grounds, Califano v. Sanders, 387 U.S. 136, 148-49 (1967). When "there are nebulous future events so contingent in nature that there is no certainty they will ever occur," the case is not ripe for adjudication. In re Drexel Burnham Lambert Group Inc., 995 F.2d 1138, 1146 (2d Cir. 1993).

"In order to determine whether an issue is ripe for adjudication, a court must make a fact-specific evaluation of 'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" United States v. Fell, 360 F.3d 135, 139 (2d Cir. 2004). The "fitness of the issues" prong of this inquiry "requires a weighing of the sensitivity of the issues presented and whether there exists a need for further factual development." Murphy v. New Milford Zoning Comm'n, 402 F.3d 342, 347 (2d Cir. 2005) (citing Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 581 (1985)). "Meanwhile, the 'hardship to the parties' prong clearly injects prudential consideration into the mix, requiring [the court] to gauge the risk and severity of injury to a party that will result if the exercise of jurisdiction is declined." Id. (citing Abbott Labs., 387 U.S. at 149).

In Williams v. Hernandez, No. 05 Civ. 2420 (PKC), 2006 WL 156411 (S.D.N.Y. Jan. 18, 2006), the Honorable P. Kevin Castel had occasion to consider the ripeness of similar claims brought by Plaintiff. There, Plaintiff alleged that the NYCHA had retaliated against her and subjected her to racial discrimination by initiating termination of tenancy proceedings in response to

complaints of harassment from Plaintiff's neighbors. Id. at *2. At the time her complaint was filed, Williams had met with Robinson and was informed that her tenant file was being forwarded to another NYCHA office for review. No other action was alleged by Williams. Id.

In considering Plaintiff's claim, Judge Castel first noted that the ripeness of Plaintiff's claim did not "turn on the precise moment when eviction proceedings should be deemed to have begun." Williams, 2006 WL 156411, at *4. Instead, "the relevant inquiry . . . is whether the proceedings have progressed to a sufficiently late stage . . ." Id. (citing Murphy, 402 F.3d at 347). Observing that "[n]ot every meeting or communication involving a state actor and an individual may give rise to a justiciable case or controversy," Williams, 2006 WL 156411, at *4, Judge Castel cited the "extensive set of procedures" that NYCHA would have to follow before Plaintiff's eviction could occur. Id. at *5. Because "Plaintiff's claims in [the] case might not ever ripen into an actual controversy," no prejudice would result from the court's

refusal to adjudicate her claims at that time.³ Williams, 2006 WL 156411, at *4-*5.

At the time the instant action was initiated, the eviction proceedings before the Hearing Officer had not yet been completed, and any ruling adverse to the Plaintiff remained subject to review by the NYCHA Board. Actual eviction would further require the NYCHA to obtain a warrant of eviction in Housing Court, during which time Plaintiff could obtain judicial review of the NYCHA's determination through an Article 78 proceeding in the New York courts.⁴ While the eviction proceedings here have progressed further than the proceedings in Williams, they have yet to reach the point where Plaintiff faces an actual threat of eviction. Where, as here, a tenant has suffered no actual harm, courts have consistently found that there has been no adverse action sufficient to maintain a claim.

See Katz v. Klehammer, 902 F.2d 204, 207 (2d Cir. 1990) (affirming Rule 12(b)(6) dismissal because mere threat of

³ Judge Castel further noted the potential hardship to the NYCHA if the court intervened prior to any meaningful action against the Plaintiff. Williams, 2006 WL 156411, at *5.

⁴ Plaintiff has filed a motion to strike Defendants' Reply and accompanying affidavits as improperly raising, for the first time, the argument that Plaintiff's third claim is now moot. See infra III.D. Because dismissal of Plaintiff's third claim is appropriate under the ripeness doctrine, consideration of the Defendants' mootness argument is unnecessary.

eviction, rather than actual eviction, was insufficient to support plaintiff's retaliation claim); Adler v. Kent Vill. Hous. Co., Inc., 123 F. Supp. 2d 91, 93-94 (E.D.N.Y. 2000) (finding plaintiff's due process claims unripe in light of possibility of plaintiff's success in parallel administrative review process); Congdon v. Strine, 854 F. Supp. 355, 364 (E.D. Pa. 1994) (holding notices of eviction sent after plaintiff filed complaints with various government agencies did not by themselves constitute retaliation under FHA because "for such action to constitute a legal foul, there must be actual harm," and plaintiff was never evicted).

Plaintiff's third claim is dismissed as unripe.

C. The Tort Claim Is Dismissed

Under New York Public Housing Law ("PHL") § 157, which incorporates General Municipal Law ("GML") § 50-e and § 50-h by reference, an individual must serve a Notice of Claim on NYCHA within one year and ninety days after the cause of action accrued before a personal injury action can be commenced. Compliance with this service requirement must also be alleged in the initial pleading. N.Y. Pub.

Hous. Law § 157(2) (McKinney 2009); see also Oshinsky v. New York City Hous. Auth., No. 98 Civ. 5467 (AGS), 2000 WL 218395, at *14 n.5 (S.D.N.Y. Feb. 23, 2000). The purpose of PHL § 157 and GML § 50-e and § 50-h are to provide municipal entities with an opportunity to timely investigate the allegations, speak with witnesses while recollections are still fresh, and where warranted, resolve claims prior to the commencement of any litigation. Failure to meet these conditions precedent are fatal to any tort claim as a matter of law. See id. (finding failure to show notice of claim was filed permitted dismissal for failure to state a cause of action) (citing Brown v. Metro. Transit Auth., 717 F. Supp. 257, 259 (S.D.N.Y. 1989)).

Williams' complaint fails to allege compliance with the Notice of Claim requirement as required by PHL § 157 and GML § 50-e in connection with her allegations that NYCHA negligently hired, supervised, and retained Robinson and Bush. Consequently, the tort claim alleged in the Complaint is dismissed as a matter of law for failure to meet a condition precedent.⁵

⁵ Plaintiff's tort claim must also be dismissed because she failed to allege that "at least thirty days have elapsed since the demand, claim or claims upon which such action . . . is founded were presented to the authority for adjustment" and that the NYCHA has not, in fact, adjusted the claim. N.Y. Pub. Hous. Law § 157(1).

**D. Plaintiff's Motion to Strike Is Dismissed As
Moot**

In their Reply Brief, Defendants argue that Plaintiff's third claim is moot in light of the fact that the administrative proceedings against Williams have been discontinued during the briefing of the instant motion. In response, Plaintiff has filed a motion to strike Defendants' Reply Brief, including the accompanying affidavits, for improperly raising the mootness argument for the first time on reply. Because the dismissal of Plaintiff's third claim does not rely on consideration of the mootness argument presented in Defendants' Reply, Plaintiff's motion to strike is dismissed as moot.

IV. CONCLUSION

On the facts and conclusions set forth above, the motion by the Defendants is granted and the Complaint is dismissed without prejudice.

It is so ordered.

New York, NY
July 22, 2009


ROBERT W. SWEET
U.S.D.J.